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RECORDATION NO. _____ Filed 1426

OCT 14 1987 - 12 15 PM

INTERSTATE COMMERCE COMMISSION

October 13, 1987

Ms. Noreta R. McGee, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

10/14/87
10.00
Washington, D. C.

Dear Ms. Secretary:

I have enclosed two (2) verified copies of the document described below, to be recorded pursuant to §11303 of Title 49 of the United States Code.

This document is a lease, a primary document dated August 15, 1987 (8/15/87).

The names and addresses of the parties to the documents are as follows:

- (1) American Zephyr, Inc. (Lessor)
772 Tiffany Drive
Gaithersburg, Maryland 20878
- (2) American Zephyr Tours, Inc.
c/o Alan H. Beck
1 W. 37th Street, 8th Floor
New York, New York 10018

A description of the equipment covered by the lease follows:

- (1) Two refurbished railroad cars (AZ 3331 and AZ 8015)
- (2) Three unrestored railroad cars (3346, 6077 and 8021)

Carroll - Donnie L. Furey

Ms. Noreta R. McGee
October 13, 1987
Page 2


A fee of twenty dollars U.S. (\$20.00) is enclosed. Please return one copy and any extra copies not needed by the Commission for recordation purposes to:

Gregory V. Powell, Esquire
Furey, Doolan & Abell
8401 Connecticut Avenue, PH-1
Chevy Chase, Maryland 20815

A short summary of the document to appear in the index follows:

A lease of rolling stock by American Zephyr, Inc. to American Zephyr Tours, Inc. which includes two (2) refurbished railroad cars (AZ 3331 and AZ 8015) and three (3) unrestored railroad cars (3346, 6077 and 8021).

Sincerely,


Gregory V. Powell

/jg

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

10/14/87

Gregory V. Powell; Esq.
Furey, Doolan & Abell
8401 Connecticut Avenue
Chevy Chase, Maryland 20815

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/14/87 at 12:15pm, and assigned recordation number(s). 15329

Sincerely yours,

Norita R. McGee
Secretary

Enclosure(s)

SE-30
(7/79)

OCT 14 1987 - 10 15 PM

INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT AND PURCHASE OPTION

This Agreement is entered into effective the 1st day of July, 1987, by and between American Zephyr, Inc. ("AZ"), a Maryland corporation with its principal place of business at 772 Tiffany Drive, Gaithersburg, Maryland 20878, and American Zephyr Tours, Inc. ("Tours"), ^{a New York State Corporation (USA)} whose present business address is c/o Alan H. Beck, 1 W. 37th Street, 8th Floor, New York, New York 10018.

WHEREAS, AZ, a company owning certain luxury passenger railroad equipment, desires to lease its equipment and remove itself from the daily operation and marketing of luxury rail services; and

WHEREAS, Tours, which has the ability and desire to operate and market luxury passenger railroad services and desires to lease such restored railroad equipment owned by AZ; and

WHEREAS, AZ desires to participate in the success of Tours' marketing and operation of luxury rail services through a minority equity interest in Tours.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the parties enter into a lease/purchase agreement as follows:

1. EQUIPMENT LEASED

Tours leases from AZ its two refurbished railroad cars in their current condition (AZ3331 and AZ8015) and the other three unrestored railroad cars which AZ owns (all five cars together being designated "the Cars") and the use of the name "American Zephyr" for a fourteen month period, commencing July 1, 1987, and

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ending August 31, 1988, for a total lease payment of \$68,000, payable on the first day of each month according to the following schedule:

July and August, 1987	-0-
September and October, 1987	\$2,000 per month
November 1987--February 1988	\$4,000 per month
March--June 1988	\$6,000 per month
July and August 1988	\$12,000 per month

The full lease payment of \$68,000 is an obligation of Tours (guaranteed as set forth in paragraph 7) unless the purchase option in paragraph 10 is exercised, in which event the then remaining lease payments shall be prorated on a daily basis without penalty.

2. NET LEASE; EXPENSES; INSURANCE. The lease payments are net of all expenses relating to the Cars (but not including interest payments on AZ corporate debt). Tours will pay all expenses relating to the Cars, including leases of railroad car parking in Beltsville, Maryland, Silver Spring, Maryland, and at Amtrak's Washington Terminal; maintenance; insurance; the cost of marketing, operating, providing personnel, and restoration of any damage to the equipment to its condition existing at March 1, 1987. AZ acknowledges receipt of \$2,096 from Tours to cover siding lease and insurance costs. *AZ also acknowledges costs of air conditioning compressor replacement for June 1987* (AAS)

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2.01 Tours will arrange for, at its expense, all maintenance necessary to keep the Cars in good and safe operating condition.

2.02 Tours, at its expense, shall keep effective during the entire term of this lease an insurance policy, listing AZ as a named insured, against liability for property damage and personal injury with the maximum limits available through AAPRCO. Tours shall also keep effective during the entire term of the lease, at its expense, insurance policies covering the Cars against fire, theft and other extended coverage casualty, with AZ named as an insured, and with coverage of at least \$150,000 per restored car and \$25,000 per unrestored car. On request from time to time, Tours will furnish AZ with a certificate of such insurance through AAPRCO. Tours hereby appoints AZ as its attorney-in-fact to make proof of loss, and receive payment of all amounts payable under those policies.

3. PAYMENTS AND DEFAULT.

3.01 Lease payments are to be paid to AZ c/o First Financial Management Services, Attention: Kendall W. Wilson, 5225 Wisconsin Avenue, Suite 602, Washington, D.C. 20015, or such other address as may be specified by AZ, on the first day of each month, in advance.

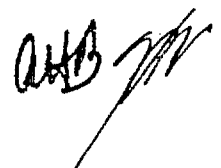
3.02 If payment is not received by the fifteenth of the month, Tours will be deemed in default, and an immediate default fee of Five Thousand Dollars (\$5,000) will become due. Such default will be in lieu of any other damages to AZ due to late payment or non-payment. Tours may, within fifteen (15) days

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after default, reinstate the lease paying all charges then due, in which case AZ will refund all but Five Hundred Dollars (\$500) of the default fee. If Tours has defaulted more than twice during one 12-month period, however, the preceding sentence shall not apply and refund or reinstatement will be permitted only at the option of AZ. If AZ has, after default by Tours, leased either or both Cars to third parties, the lease will not be reinstated until after the completion of any such third party lease. If Tours defaults, it may not continue to utilize the AZ's name or Cars, and the Cars will be returned immediately to AZ's possession.

3.03 If Tours fails to perform any obligation within ten (10) days after AZ has demanded performance in writing, or if AZ reasonably determines that Tours is unable to meet its obligations in the ordinary course of business, or if any proceeding in bankruptcy, receivership, insolvency or assignment for the benefit of its creditors shall be commenced by or against Tours or its property, AZ shall have the right--but shall not be obligated--to exercise any one or more of the following remedies:

(a) To accelerate the terms of this lease and declare the full amount of payment immediately due, and to sue for and recover all payment and other amounts then due or thereafter accruing under this lease; (b) To take possession of the Cars, wherever located, without demand or notice, without any court order or other process of law, and without incurring any




liability to Tours for any damages occasioned by such taking of possession; (c) To terminate this lease; (d) In the event AZ elects to terminate this lease, to recover from Tours damages caused by the breach; (e) To pursue any other remedy now or hereafter existing at law or in equity.

3.04 Notwithstanding any such action that AZ may take, including taking possession of the Cars, Tours remains liable for the full performance of all its obligations under this Agreement, provided, however, that if AZ in writing terminates this lease, Tours shall not be liable for lease payments accruing after the date of termination. In addition to other obligations under this Section, Tours shall pay AZ all costs and expenses, including attorneys' fees of twenty percent (20%) of any amount demanded, if this lease is placed in the hands of an attorney for collection, or for exercise of any of AZ's rights.

4. EXTENSION OF LEASE. The lease may be extended only by mutual agreement of the parties, in writing.

5. CANCELLATION. This Lease may not be terminated by either party except as follows: if after November 30, 1987, AZ wishes to accept a bona fide offer to sell the Cars to a third party for \$225,000 or more, AZ shall notify Tours in writing and attach a copy of the offer. If Tours does not, within twenty (20) days of receipt of the notice, notify AZ in writing of exercise of its option under paragraph 10 below, then AZ may at its option cancel this lease agreement as of the end of the current month, by written notice to Tours, and sell the Cars to



6. USE, OPERATION AND MAINTENANCE. Tours shall use the Cars in the manner for which they were designed and intended, solely for Tours' business purposes. All operations shall be legal and in good taste. Tours shall keep the Cars secure and protected from theft or vandalism, and in good condition. All replacement parts, repairs, alterations, or additions made to the Cars at any time before any final transfer of title to Tours shall become the property of AZ. Upon return to AZ of the Cars, Tours, if requested to do so by AZ, shall remove any alterations or additions and restore the Cars to their original condition as of March 1, 1987.

7. TOURS CORPORATION. Tours shall at all times during the terms of this agreement be a corporation:

(a) A purpose of which is the marketing and operation of luxury passenger railroad services;

(b) Of which Alan H. Beck or his designee serves as Chief Operating Officer; and

(c) Obligations of which under this agreement are personally guaranteed by Alan H. Beck.

8. ASSIGNMENT.

Without AZ's prior written consent, Tours shall not (a) assign, pledge, hypothecate or otherwise dispose of this lease or the purchase option or any interest in either, or (b) sublet or lend the Cars or permit them to be used by anyone other than Tours or Tours' employees. AZ may not assign this lease in whole or in part without notice to Tours; and its assignee may not re-

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assign this lease without thirty (30) days' notice to Tours.

Subject to the foregoing, this lease inures to the benefit of and is binding upon the successors and assigns of the parties.

9. OWNERSHIP; ADDITIONAL DOCUMENTS.

9.01 The Cars are, and shall at all times during the lease term remain, the property of AZ. Tours shall have no right, title or interest in the Cars except as expressly set forth in this lease, unless and until transfer following the exercise of its purchase option. Tours shall not take any step to subject the Cars to any liens or encumbrances.

9.02 Tours shall be required to execute such additional documents, including but not limited to financing statements, as may reasonably be requested by the AZ to record its interest in the Cars, to establish continued financial responsibility, or to correct a document which does not accurately set forth the agreement between the parties. Financing statements shall not be construed to mean that this transaction is not a Lease or that anyone other than AZ owns the Cars. AZ may at its option, at reasonable intervals, request the Tours or any guarantor of this lease to submit current financial statements or other documents as proof of continued financial responsibility.

10. PURCHASE OPTION.

10.01 Tours is granted an option, at any time during the lease term, to acquire the Cars and the use of the American Zephyr name for Two Hundred Thousand Dollars (\$200,000), to be paid in cash. At closing, AZ will convey marketable title to the

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Cars, free and clear of all liens and claims of creditors of AZ, and the right to use the American Zephyr name.

10.02 The option is to be exercised by delivering, on or before the end of the lease term, written notice of intent to exercise the option, accompanied by a down payment in the amount of Twenty Thousand Dollars (\$20,000), by cash, certified cash, or wire funds. The deposit is non-refundable and will be applied against the purchase price. Closing, and the payment of the balance of the purchase price, is to take place within ten (10) days of the notice of exercise.

10.06 The paragraphs in this Agreement numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, and 17 will no longer apply after closing on the sale pursuant to the purchase option. Lease payments will be prorated to the date of closing and no further lease payments will be owed.

11. AZ IMAGE. Tours, through itself and affiliated companies, whether founded at the time of this agreement or subsequently, agrees to market AZ's equipment, use its name, and operate the Cars in such a way as to at all times protect AZ's name and image as an elegant rail charter and excursion company. AZ shall have the right to approve all Tours marketing plans and activities as they might affect the image or market perception of AZ's name. Such approval may not be unreasonably withheld.

12. OPTION TO PURCHASE TOURS STOCK. If Tours exercises its option under ¶10 to purchase the Cars and the AZ name, it agrees

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to offer AZ the option to purchase twenty percent (20%) of the common stock ownership (voting and non-voting) in Tours. The total cost of such purchase shall be One Thousand Dollars (\$1,000), payable in cash. The option may be exercised by AZ at any time until six (6) months following the closing on the sale of the Cars. If AZ exercises its option to acquire twenty percent (20%) of the common stock of Tours:

12.01 Tours and Beck agree that this interest may not be diluted by any future action of Tours or Beck. If any additional stock in Tours is issued, a proportionate amount must be issued to AZ, without additional cost, to maintain its twenty percent (20%) position.

12.02 Beck and Tours agree that they will not cause or permit the formation of any entity competing with Tours or otherwise adversely affecting the profitability of Tours.

13. AZ BOARD SEAT. Alan H. Beck will be elected in a timely manner to the Board of Directors of AZ for an open exchange of ideas and reports, with periodic meetings in such a location as the Board may determine.

14. DISCLAIMER OF WARRANTIES. TOURS AGREES THAT THE CARS LEASED ARE OF A DESIGN AND CAPACITY SELECTED BY TOURS AND THAT TOURS IS SATISFIED THAT THE SAME IS SUITABLE FOR ITS INTENDED PURPOSES. TOURS FURTHER ACKNOWLEDGES THAT AZ HAS MADE NO EXPRESS OR IMPLIED WARRANTIES, AS TO ANY MATTER WHATSOEVER CONCERNING THE LEASED CARS, INCLUDING THEIR DESIGN OR CONDITION, THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE, OR THE



CONFORMITY OF THE CARS TO ANY PURCHASE SPECIFICATIONS. AZ LEASES THE CARS "AS IS."

AZ SHALL NOT BE LIABLE TO TOURS OR ANY THIRD PARTY FOR ANY LIABILITY, CLAIM OR EXPENSE OF ANY KIND OR ARISING IN CONNECTION WITH, THE FITNESS, OPERATION OR PERFORMANCE OF THE CARS; ANY INTERRUPTION OR LOSS OF SERVICE OR USE; OR ANY LOSS OF BUSINESS, OR ANY OTHER DAMAGE WHATSOEVER; PROVIDED THAT AZ SHALL BE LIABLE TO TOURS FOR ANY SUCH LOSS CAUSED BY THE NEGLIGENCE OR MISCONDUCT OF AZ, OR ITS AGENTS AND REPRESENTATIVES.

15. INDEMNIFICATION.

(a) Tours will hold AZ and its officers agents and employees, harmless and indemnify them from any liability, demands, fees, expenses or complaints (including legal costs and attorneys' fees) arising from any claims against Tours or any of its affiliates resulting from the acts of Tours or any of its affiliates;

(b) AZ will hold Tours and its agents and employees, harmless and indemnify them from any liability, demands, fees, expenses or complaints (including legal costs and attorneys' fees) arising from any claims against Tours or any of its affiliates resulting from (i) the acts of AZ or any of its affiliates, or (ii) any debts, obligations, or expenses incurred by AZ before Tours began this lease.

(c) Any indemnity payments under this paragraph shall be made within thirty (30) days of claim.

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16. NOTICES. Any notice required or permitted by this Agreement to be given to AZ or Tours shall be in writing and shall be addressed to AZ or Tours at its address first above written, or at such other address as AZ or Tours may designate in writing from time to time.

17. CONTINGENCY AND CONTINUED FINANCING. The parties recognize that this Agreement depends on continued ownership of the Cars by AZ, which in turn depends on AZ's ability to maintain a bank loan of \$200,000 on substantially the same terms as it has arranged for the past two years. If such terms should become unavailable, then this Agreement may be terminated on notice from AZ, attaching letters from two Washington, D.C. area banks stating the unavailability of such terms.

18. SUCCESSORS AND ASSIGNS. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns becoming such in accordance with the terms of this Agreement. Except as provided in this section, nothing contained in this agreement shall be deemed to create a third party beneficiary or other rights in favor of any person, firm, corporation or other entity not a part to this Agreement.

19. WAIVERS. The failure of any party to insist upon a strict performance of any of the terms or provisions of this Agreement or to exercise this option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option,

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right or remedy, but the same shall continue and remain in full force and effect throughout the term of this Agreement. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

20. CAPTIONS AND PRONOUNS. The captions in this Agreement are for convenience of reference only and shall not alter or otherwise affect their meaning. Words of gender used in this Agreement shall be construed to include any other gender and words in the singular number shall be construed to include the plural, unless the context otherwise requires.

21. GOVERNING LAW. This Agreement, and the rights and obligations of the parties hereto, shall be governed by and construed in accordance with the laws of the District of Columbia.

22. ATTORNEY'S FEES AND COSTS. Except as specifically provided to the contrary, each party shall be responsible for attorneys' fees and costs incurred by it in connection with this Agreement.

23. ADDITIONAL DOCUMENTS AND ACTS. All appropriate supplemental agreements or other instruments necessary or desirable in order to make this Agreement and any provision fully effective, or to carry out its intent, shall be executed and delivered, and all other acts necessary or appropriate for such purposes shall be duly or effectively performed by the parties. Each signer below warrants that he is authorized to execute this

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Agreement and that any necessary corporate action has been taken. Beck agrees to provide, within five (5) days of execution of this Agreement, certification from Tours' counsel that Tours is a validly organized existing corporation and enclosing copies its charter and bylaws.

24. EXECUTION IN COUNTERPARTS. This agreement may be executed in counterparts, which together shall constitute one instrument.

25. ENTIRE AGREEMENT. THIS INSTRUMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN AZ, TOURS AND BECK. ANY CHANGE MUST BE IN WRITING AND SIGNED BY BECK AND BY AUTHORIZED OFFICERS OF AZ AND TOURS.

Date

8/15/87

Date

8/15/87

Date

8/15/87

AMERICAN ZEPHYR, INC.

By:

Kendall W. Wilson, President

AMERICAN ZEPHYR TOURS, INC.

By:

Alan H. Beck for American Zephyr Tours, Inc.

Alan H. Beck

AFFIDAVIT

1. I, Gregory V. Powell, am competent to testify.
2. I am attorney for American Zephyr, Inc.
3. I have compared the copy of the lease agreement presented with the original document and found the copy to be a complete and identical copy in all respects to the original document.
4. I solemnly affirm under the penalties of perjury that the contents of the foregoing Affidavit are true to the best of my knowledge, information and belief.

Gregory V. Powell

Gregory V. Powell
Furey, Doolan & Abell
8401 Connecticut Avenue, PH-1
Chevy Chase, Maryland 20815

State of *Maryland*
County of *Montgomery*

On this 14th day of October, 1987, before me, the undersigned officer, personally appeared Gregory V. Powell, known to me to be the person whose name is subscribed to within the instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Marie L. Stevenson

Notary Public

My commission expires:

My Commission Expires July 1, 1990